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2  
3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF WASHINGTON

5 MICHAEL LA FRANCE,

6 Plaintiff,

7 v.  
8

9 CAROLYN W. COLVIN,  
10 Commissioner of Social Security,

11 Defendant.  
12

No. 1:14-CV-3077-JTR

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND REMANDING  
FOR AN IMMEDIATE AWARD OF  
BENEFITS

13 **BEFORE THE COURT** are Plaintiff's Motion for Summary Judgment,  
14 ECF No. 12, and Defendant's Motion for Remand, ECF No. 20. Attorney D.  
15 James Tree represent Michael La France (Plaintiff); Special Assistant United  
16 States Attorney Franco L. Becia represents the Commissioner of Social Security  
17 (Defendant). The parties have consented to proceed before a magistrate judge.  
18 ECF No. 24. After reviewing the administrative record and the briefs filed by the  
19 parties, the Court **GRANTS** Plaintiff's Motion for Summary Judgment; **DENIES**  
20 Defendant's Motion for Remand; and **REMANDS** the matter to the Commissioner  
21 for an immediate award of benefits.

22 **JURISDICTION**

23 Plaintiff protectively filed an application for Supplemental Security Income  
24 on June 2, 2010, alleging disability since May 1, 2006, Tr. 136-139, due to  
25 learning disability, back problems, and scoliosis, Tr. 162. The application was  
26 denied initially and upon reconsideration. The Administrative Law Judge (ALJ)  
27 held a hearing on June 19, 2012, Tr. 32-63, and issued an unfavorable decision on  
28 August 3, 2012, Tr. 18-28. The Appeals Council denied review on April 16, 2014.

Tr. 1-6. The ALJ's August 2012 decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on June 3, 2014. ECF No. 1, 3.

### STATEMENT OF FACTS

The facts of this case are set forth in the administrative hearing transcript, the ALJ's decision, and the briefs of the parties. They are briefly summarized here.

Plaintiff was born on May 16, 1977, and was 28 years old on the alleged onset date, May 1, 2006. Tr. 136. He completed high school in 1996, attending special education classes, and has past work as a general laborer. Tr. 48, 162-163. Plaintiff testified at the administrative hearing that he started having back problems after having his spleen removed, but he had not been able to obtain insurance in order to have his back issue fully examined. Tr. 49-50. He further testified that "two out of ten days" his contact dermatitis caused hand pain that prevented him from doing anything with his hands. Tr. 50-51.

Marie Ho, M.D, examined Plaintiff for purposes of his disability application on October 17, 2010, Tr. 242-246, and January 16, 2011, Tr. 252-258. Dr. Ho initially diagnosed a history of scoliosis with chronic back problems since 2003 and a learning disability, Tr. 245, and indicated Plaintiff would be limited to sitting, standing and walking less than six hours in an eight-hour work day, occasionally lifting and carrying 20 pounds, and frequently lifting and carrying 10 pounds, Tr. 246. Dr. Ho also initially noted Plaintiff would have occasional restrictions on postural activities, including kneeling, crouching, and stooping; Plaintiff had no restrictions of manipulative or workplace environment activities; and Plaintiff's history of learning disability could limit his ability to function in the workplace. Tr. 246. On January 16, 2011, Dr. Ho diagnosed history of scoliosis, dermatitis of the hands with no improvement after topical treatment, and dermatitis

1 of the thighs due to laundry detergent. Tr. 257. On this occasion, Dr. Ho indicated  
2 Plaintiff's lifting and carrying were limited to 10 pounds occasionally and 10  
3 pounds frequently and restrictions of manipulative activities included reaching,  
4 handling, and fingering occasionally with his hands. Tr. 258.

5 State agency reviewing physician Wayne Hurley, M.D., opined on February  
6 16, 2011, that Plaintiff was limited to only occasional handling and feeling with his  
7 hands due to contact dermatitis. Tr. 85-86.

8 Orthopedic surgeon, Richard Hutson, M.D., testified as a medical expert at  
9 the administrative hearing. Tr. 37-41. Dr. Hutson indicated he had reviewed the  
10 medical record, and the record reflected Plaintiff had a history of scoliosis with  
11 back pain since 2003. Tr. 39. Dr. Hutson indicated he would generally agree with  
12 Dr. Ho's assessments based on the objective medical evidence in the record. Tr.  
13 39, 41. However, Dr. Hutson indicated he could not give an objective opinion on  
14 Dr. Ho's assessment of manipulative limitations stemming from contact dermatitis,  
15 because he believed most contact dermatitis could be appropriately treated and a  
16 patient's functioning would thereafter improve. Tr. 40-41.

17 On October 5, 2010, clinical psychologist Roland Dougherty, Ph.D.,  
18 examined Plaintiff in relation to his disability claim. Tr. 237-241. Dr. Dougherty  
19 diagnosed cognitive disorder, NOS, and chronic back pain. Tr. 241. It was noted  
20 that Plaintiff's conversation suggested some intellectual deficits, but Plaintiff  
21 reported being able to read well and that cognitive deficits did not interfere with  
22 his past job functioning. Tr. 241. Dr. Dougherty opined that Plaintiff may have  
23 some difficulties with comprehension and memory for more complex tasks, but he  
24 should be able to understand, remember and follow simple instructions. *Id.*

25 On October 21, 2010, Philip L. Johnson, Ph.D., evaluated Plaintiff. Tr. 247-  
26 251. Dr. Johnson diagnosed mathematics disorder; borderline intellectual  
27 functioning; and back problems, scoliosis, contact dermatitis per Plaintiff's report.  
28 Tr. 251. It was noted that Plaintiff tested in the borderline range of intelligence,

1 but his academic achievement scores were in the high school range, except for  
2 math, which was at the second grade level. Tr. 251.

3 Clinical psychologist Margaret Ruth Moore, Ph.D., testified as a medical  
4 expert at the administrative hearing. Tr. 41-48. Dr. Moore stated the record  
5 reflected a history of cognitive limitations, borderline intellectual functioning and a  
6 likely mathematics disorder. Tr. 43. She opined it would be an incorrect  
7 assumption to jump to Listing 12.05, because Plaintiff was functioning at a higher  
8 level than mild mental retardation as contemplated at Listing 12.05. Tr. 43. Dr.  
9 Moore indicated Plaintiff would have some significant issues in terms of his ability  
10 to process and perform complicated instructions, but the record did not suggest he  
11 met or equaled a listing based on mental health alone. Tr. 44.

12 Vocational expert K. Diane Kramer testified at the administrative hearing on  
13 June 19, 2012, and identified the light exertion level jobs of cleaner I, sorter, and  
14 production assembler as positions Plaintiff would be able to perform with the  
15 limitations identified by the ALJ. Tr. 59-60. Ms. Kramer also indicated Plaintiff  
16 could perform these jobs “if he had a flare of his contact dermatitis [and] could  
17 wear non-latex gloves.” Tr. 60-61. On cross-examination, Ms. Kramer indicated  
18 an individual could not maintain competitive employment with the added  
19 limitations of only occasional handling and feeling of the hands bilaterally, or more  
20 than occasional handling and feeling of the hands sometimes, but at least on an  
21 average about six days a month it would be limited to at least occasional or less.  
22 Tr. 61.

### 23 STANDARD OF REVIEW

24 The ALJ is responsible for determining credibility, resolving conflicts in  
25 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
26 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed de novo,  
27 although deference is owed to a reasonable construction of the applicable statutes.  
28 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ

1 may be reversed only if it is not supported by substantial evidence or if it is based  
 2 on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial  
 3 evidence is defined as being more than a mere scintilla, but less than a  
 4 preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant  
 5 evidence as a reasonable mind might accept as adequate to support a conclusion.  
 6 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to  
 7 more than one rational interpretation, the court may not substitute its judgment for  
 8 that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec.*  
 9 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by  
 10 substantial evidence will still be set aside if the proper legal standards were not  
 11 applied in weighing the evidence and making the decision. *Browner v. Secretary*  
 12 *of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial  
 13 evidence supports the administrative findings, or if conflicting evidence supports a  
 14 finding of either disability or non-disability, the ALJ's determination is conclusive.  
 15 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

### 16 SEQUENTIAL EVALUATION PROCESS

17 The Commissioner has established a five-step sequential evaluation process  
 18 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
 19 416.920(a); *see, Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one  
 20 through four, the burden of proof rests upon the claimant to establish a prima facie  
 21 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This  
 22 burden is met once a claimant establishes that a physical or mental impairment  
 23 prevents him from engaging in his previous occupation. 20 C.F.R. §§  
 24 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the  
 25 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that  
 26 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist  
 27 in the national economy which claimant can perform. *Batson v. Commissioner of*  
 28 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make

1 an adjustment to other work in the national economy, a finding of “disabled” is  
2 made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

### 3 **ADMINISTRATIVE DECISION**

4 On August 3, 2012, the ALJ issued a decision finding Plaintiff was not  
5 disabled as defined in the Social Security Act. At step one, the ALJ found Plaintiff  
6 had not engaged in substantial gainful activity since June 2, 2010, the application  
7 date. Tr. 20. At step two, the ALJ determined Plaintiff had the following severe  
8 impairments: back pain secondary to scoliosis and status post splenectomy; recent  
9 onset of knee pain; obesity; and borderline intellectual functioning with a math  
10 disorder. Tr. 20. At step three, the ALJ found Plaintiff did not have an impairment  
11 or combination of impairments that meets or medically equals the severity of one  
12 of the listed impairments. Tr. 21.

13 The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and  
14 determined he could perform a range of light exertion level work. Tr. 23. The  
15 ALJ found Plaintiff can lift and/or carry 20 pounds occasionally and lift and/or  
16 carry 10 pounds frequently; can sit, stand and/or walk about six hours in an eight-  
17 hour day; is not able to climb ladders, ropes, or scaffolds; can only occasionally  
18 climb ramps or stairs; can only occasionally balance, stoop, kneel, crouch or crawl;  
19 must avoid concentrated exposure to extreme cold, wetness, vibration, and hazards  
20 (such as moving machinery and heights); can understand, remember and carry out  
21 simple, routine, repetitive tasks and well-learned, detailed tasks, but is unable to  
22 perform work that involves any mathematics calculations; requires instruction by  
23 demonstration, as opposed to written form; and requires additional time to adapt to  
24 changes in the work routine. Tr. 23.

25 At step four, the ALJ found Plaintiff was not able to perform his past  
26 relevant work. Tr. 26-27. However, at step five, the ALJ determined that,  
27 considering Plaintiff’s age, education, work experience and RFC, and based on the  
28 testimony of the vocational expert, there were other jobs that exist in significant

1 numbers in the national economy Plaintiff could perform, including the jobs of  
2 cleaner I, sorter, and production assembler. Tr. 27-28. The ALJ thus concluded  
3 Plaintiff was not under a disability within the meaning of the Social Security Act at  
4 any time from June 2, 2010, the application date, through the date of the ALJ's  
5 decision, August 3, 2012. Tr. 28.

## 6 ISSUES

7 The question presented is whether substantial evidence supports the ALJ's  
8 decision denying benefits and, if so, whether that decision is based on proper legal  
9 standards.

10 Plaintiff contends the ALJ erred by (1) failing to properly consider medical  
11 opinion evidence regarding Plaintiff's functional limitations; (2) improperly  
12 rejecting Plaintiff's subjective complaints; (3) improperly rejecting the testimony  
13 of Plaintiff's girlfriend, Pamela Travis; (4) failing to consider and find Plaintiff  
14 meets Listing 12.05C; and (5) relying on the testimony of a vocational expert that  
15 was based on an incomplete hypothetical question.

## 16 DISCUSSION

17 Defendant agrees with Plaintiff that the ALJ erred in this case, but asserts  
18 that remand for further proceedings is the proper remedy because there are  
19 unresolved issues that must be evaluated and the record does not clearly require a  
20 finding of disability. ECF No. 20 at 3. While Defendant contends there are factual  
21 issues that need to be resolved on remand, Defendant does not identify what those  
22 precise factual issues are and only challenges Plaintiff's argument regarding  
23 Listing 12.05C. Defendant does not contest Plaintiff's assertions regarding the  
24 other alleged errors in this matter.

### 25 A. Medical Record

26 Plaintiff asserts, and Defendant does not contest, that the ALJ erred by  
27 failing to properly consider the medical opinion evidence regarding Plaintiff's  
28 functional limitations. ECF No. 12 at 9-16. Plaintiff specifically argues the ALJ

1 erred by failing to account for Plaintiff's manipulative limitations as assessed by  
2 Drs. Ho, Hurley and Hutson. Plaintiff additionally argues the ALJ erred by  
3 providing no rationale for disregarding Dr. Ho's opinion that Plaintiff was limited  
4 to sedentary exertion level work.

5 The ALJ indicated she accorded "significant weight" to the findings of Dr.  
6 Ho and "great weight" to the assessments of the state agency physicians (Dr.  
7 Hurley) and Dr. Hutson. Tr. 25-26. The ALJ indicated these doctors found  
8 Plaintiff's manipulative limitations were only temporary and would resolve with  
9 proper care. *Id.* This statement is not supported by the evidence of record.

10 On January 16, 2011, Dr. Ho opined Plaintiff's manipulative activities,  
11 included reaching, handling, and fingering, were restricted. Tr. 258. Dr. Ho did  
12 not opine, as held by the ALJ, that Plaintiff's manipulative restrictions were  
13 temporary. State agency reviewing physician Hurley noted on February 16, 2011,  
14 that Plaintiff was limited to occasional handling and feeling with his hands due to  
15 contact dermatitis. Tr. 85-86. Again, there is no indication by this reviewing  
16 physician that the assessed manipulative restrictions were temporary. Medical  
17 expert Hutson testified on June 19, 2012, that he would generally agree with Dr.  
18 Ho's assessments, but indicated he could not give an objective opinion regarding  
19 Dr. Ho's assessment of manipulative limitations stemming from contact dermatitis  
20 because he believed most contact dermatitis could be appropriately treated and a  
21 patient's functioning would thereafter improve. Tr. 39-41. Dr. Hutson merely  
22 stated "most" contact dermatitis could be treated; he did not give an opinion as to  
23 Plaintiff's specific condition. *Id.* Dr. Hutson did not, as determined by the ALJ,  
24 "concur[] with Dr. Ho in that the manipulative limitations the claimant experienced  
25 during the second physical evaluation were temporary." Tr. 26.

26 The significant weight given to the opinions of Drs. Ho, Hurley, and Hutson  
27 by the ALJ should have accounted for Plaintiff's documented manipulative  
28 limitations. The ALJ erred in this regard.

1 The ALJ also erred by failing to account for the exertional limitations  
 2 assessed by Dr. Ho during her second evaluation of Plaintiff. On January 16,  
 3 2011, Dr. Ho opined Plaintiff was limited to sedentary work.<sup>1</sup> Tr. 258. Despite  
 4 this determination by Dr. Ho, and the ALJ according Dr. Ho's opinion "significant  
 5 weight," the ALJ found Plaintiff could perform light exertion level work. Tr. 23.  
 6 The ALJ failed to provide rationale for concluding, contrary to Dr. Ho's most  
 7 recent opinion, that Plaintiff was capable of performing work at a greater exertion  
 8 level.

## 9 **B. Credibility**

10 Plaintiff next contends the ALJ erred by discrediting his symptom testimony  
 11 without providing specific, clear and convincing reasons for doing so and by  
 12 discrediting the lay witness testimony of Plaintiff's girlfriend. ECF No. 12 at 16-  
 13 23. Defendant provides no opposition to Plaintiff's credibility assertions.

### 14 **1. Plaintiff's Credibility**

15 Plaintiff contends the ALJ erred by failing to provide valid reasons for  
 16 rejecting his subjective complaints. ECF No. 12 at 16-21. The Court agrees.

17 It is the province of the ALJ to make credibility determinations. *Andrews v.*  
 18 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be  
 19 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231  
 20 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying  
 21 medical impairment, the ALJ may not discredit testimony as to the severity of an  
 22 impairment because it is unsupported by medical evidence. *Reddick v. Chater*, 157  
 23 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of malingering, the  
 24 ALJ's reasons for rejecting the claimant's testimony must be "specific, clear and  
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26 <sup>1</sup>Sedentary work involves lifting no more than 10 pounds at a time, and  
 27 occasionally lifting or carrying articles like docket files, ledgers, and small tools.  
 28 20 C.F.R. § 404.1567(a).

1 convincing.” *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v.*  
2 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995). “General findings are insufficient:  
3 rather the ALJ must identify what testimony is not credible and what evidence  
4 undermines the claimant’s complaints.” *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*,  
5 12 F.3d 915, 918 (9th Cir. 1993).

6 The Court concludes the ALJ provided no valid reasons for finding  
7 Plaintiff’s statements concerning the intensity, persistence and limiting effects of  
8 his symptoms were less than fully credible in this case. *See infra*.

9 The ALJ first cited Plaintiff’s lack of treatment as a factor in assessing  
10 Plaintiff’s credibility. Tr. 24. In assessing a claimant’s credibility, an ALJ  
11 properly relies upon “‘unexplained or inadequately explained failure to seek  
12 treatment or to follow a prescribed course of treatment.’” *Tommasetti v. Astrue*,  
13 533 F.3d 1035, 1039 (9th Cir. 2008) (quoting *Smolen*, 80 F.3d at 1284); *see Orn v.*  
14 *Astrue*, 495 F.3d 625, 638 (9th Cir. 2007) (an “unexplained, or inadequately  
15 explained, failure to seek treatment may be the basis for an adverse credibility  
16 finding unless one of a ‘number of good reasons for not doing so’ applies”). A  
17 claimant’s statements may be deemed less credible “if the level or frequency of  
18 treatment is inconsistent with the level of complaints, or if the medical reports or  
19 records show that the individual is not following the treatment as prescribed and  
20 there are no good reasons for this failure.” SSR 96-7p.

21 However, a claimant’s failure to follow a course of treatment may be  
22 excused if the claimant cannot afford the treatment. *Gamble v. Chater*, 68 F.3d  
23 319, 321 (9th Cir. 1995). As asserted by Plaintiff, and not disputed by Defendant,  
24 the record shows Plaintiff was not able to afford medical treatment in this case.  
25 ECF No. 12 at 17 (citing Tr. 50, 56, 253). Plaintiff did not have the means for  
26 treatment, but testified he had unsuccessfully attempted to acquire medical  
27 insurance coverage to obtain treatment. ECF No. 12 at 19 (citing Tr. 50). Plaintiff  
28 reported he did seek treatment for contact dermatitis on one occasion and “was

1 charged over \$100” for an examination that lasted “about one minute.” ECF No.  
2 12 at 17 (citing Tr. 253). The topical cream prescribed following this examination  
3 did not relieve his symptoms.

4 The ALJ also mentioned that the severity and limiting effects of Plaintiff’s  
5 impairments were not sufficiently documented in the record. Tr. 24. A lack of  
6 supporting objective medical evidence is a factor which may be considered in  
7 evaluating an individual’s credibility, provided it is not the sole factor. *Bunnell v.*  
8 *Sullivan*, 347 F.2d 341, 345 (9th Cir. 1991). However, as indicated by Plaintiff,  
9 and not contested by Defendant, objective medical findings support Plaintiff’s  
10 symptom testimony, including December 2004 x-rays which revealed curvature of  
11 Plaintiff’s spine, confirming scoliosis, Tr. 272, and medical findings by Dr. Ho  
12 consistent with Plaintiff’s testimony regarding the severity and limiting effects of  
13 his impairments. ECF No. 12 at 20-21.

14 The ALJ failed to provide specific, clear and convincing reasons for  
15 rejecting Plaintiff’s testimony in this case. The ALJ’s determination regarding  
16 Plaintiff’s credibility is not supported.

## 17 **2. Lay Witness Credibility**

18 Plaintiff also contends the ALJ erred by not making proper credibility  
19 findings as to the testimony of lay witness Pamela Travis, Plaintiff’s girlfriend.  
20 ECF No. 12 at 21-23.

21 The ALJ shall “consider observations by non-medical sources as to how an  
22 impairment affects a claimant’s ability to work.” *Sprague v. Bowen*, 812 F.2d  
23 1226, 1232 (9th Cir. 1987), citing 20 C.F.R. § 404.1513(e)(2). The ALJ may not  
24 ignore or improperly reject the probative testimony of a lay witness without giving  
25 reasons that are germane to each witness. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th  
26 Cir. 1993).

27 As argued by Plaintiff, ECF No. 12 at 23, and not disputed by Defendant,  
28 the ALJ rejected Ms. Travis’ statement without providing adequate reasoning,

1 stating only that “there are no corroborating records or medical opinions  
2 documenting a level of limitation greater than that assessed” by the ALJ, Tr. 26.

3 Consistent with Plaintiff’s testimony and Dr. Ho’s reports, Ms. Travis  
4 indicated Plaintiff could not stand or sit for long periods of time and had difficulty  
5 using his hands. Tr. 205-212. Contrary to the ALJ’s finding regarding Ms. Travis,  
6 her statement is supported by credible record evidence. The ALJ failed to provide  
7 germane reasons for rejecting Ms. Travis’ statement.

8 **C. Step Five**

9 As discussed above, the ALJ accorded significant weight to the findings of  
10 Drs. Ho, Hurley, and Hutson, but erred by failing to account for Plaintiff’s  
11 documented manipulative limitations. The ALJ additionally erred by disregarding  
12 Dr. Ho’s opinion that Plaintiff was limited to sedentary exertion level work. The  
13 testimony of Plaintiff and statement of Ms. Travis further evidence that Plaintiff is  
14 limited to sedentary work and that Plaintiff’s manipulative limitations restrict his  
15 ability to perform work. As indicated above, the ALJ failed to provide adequate  
16 reasons for rejecting their testimony. *See Lester*, 81 F.3d at 834 (if the ALJ  
17 improperly rejects testimony regarding limitations, and the claimant would be  
18 disabled if the testimony were credited, the matter should not be remanded solely  
19 to allow the ALJ to make specific findings regarding that testimony; the testimony  
20 should be credited as a matter of law).

21 Vocational expert K. Diane Kramer testified at the administrative hearing  
22 that with the profile provided by the ALJ, Plaintiff would be able to perform the  
23 light exertion level jobs of cleaner I, sorter, and production assembler. Tr. 59-60.  
24 However, with the added limitations of only occasional handling and feeling of the  
25 hands bilaterally or more than occasional handling and feeling of the hands  
26 sometimes, but at least on an average about six days a month it would be limited to  
27 at least occasional or less, Ms. Kramer indicated that such an individual could not  
28 maintain competitive employment. Tr. 61.

1 The vocational expert's responses to questioning indicate that, with the  
 2 manipulative limitations assessed by the above medical professionals and  
 3 corroborated by the testimony of Plaintiff and Ms. Travis, a hypothetical individual  
 4 would not be able to perform competitive employment. Tr. 61. The weight of the  
 5 record evidence, including the opinions of Drs. Ho, Hurley, and Hutson, and the  
 6 testimony of Plaintiff, Ms. Travis, and the vocational expert, demonstrate that,  
 7 contrary to the conclusions of the ALJ, Plaintiff is not able to work.

8 **D. Listing 12.05C**

9 Having determined the weight of the record evidence supports a finding that  
 10 Plaintiff is disabled at step five of the sequential evaluation process, the Court need  
 11 not address Plaintiff's assertion regarding Listing 12.05C,<sup>2</sup> the only claim  
 12 specifically challenged by Defendant in this case, ECF No. 20 at 8-10.

13 **CONCLUSION**

14 Having reviewed the record and the ALJ's conclusions, the Court finds the  
 15 ALJ's decision is not free of legal error. The Court has the discretion to remand  
 16 the case for additional evidence and finding or to award benefits. *Smolen v.*  
 17 *Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). The Court may award benefits if the  
 18 record is fully developed and further administrative proceedings would serve no  
 19 useful purpose. *Id.* Remand for additional evidence is appropriate when additional  
 20 administrative proceedings could remedy defects. *Rodriguez v. Bowen*, 876 F.2d  
 21 759, 763 (9th Cir. 1989). In this case, the record is adequate for a proper  
 22 determination to be made and further development is not necessary.

23 ///

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24  
 25 <sup>2</sup>The Court nevertheless notes there appears to be insufficient evidence in the  
 26 record to carry Plaintiff's argument that his impairments meet or equal Listing  
 27 12.05C. *See* Tr. 44 (Medical Expert Moore testimony indicating the record did not  
 28 suggest Plaintiff met or equaled a Listing 12.05).

As discussed above, the ALJ erred by according significant weight to the opinions of Drs. Ho, Hurley, and Hutson, but failing to account for the manipulative limitations documented by these medical professionals; by disregarding Dr. Ho's opinion that Plaintiff was limited to sedentary exertion level work; and by failing to provide appropriate rationale for rejecting the testimony of Plaintiff and Ms. Travis. *Supra*. After taking into consideration the opinions of these medical professionals and the testimony of Plaintiff, Ms. Travis, and the vocational expert, the evidence of record reveals Plaintiff was not capable of performing sustained work activity. The ALJ's determination that Plaintiff could perform other work existing in substantial numbers in the national economy is not supported by substantial evidence. Accordingly, the case should be remanded for an immediate award of benefits.

**IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **GRANTED**.
  2. Defendant's Motion for Remand, **ECF No. 20**, is **DENIED**.
  3. The matter is **REMANDED** to the Commissioner for an immediate award of benefits.
  4. An application for attorney fees may be filed by separate motion.
- The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered in favor of **PLAINTIFF** and the file shall be **CLOSED**.

DATED November 2, 2015.



A handwritten signature in black ink, appearing to be "M" or "Rodgers", written over a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE